

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.337 of 2021

Sri Alvin Debbarma,

son of Anil Debbarma, resident of Happy Valley, Nandannagar,
P.O. Bankumari, P.S. G.B. Bazaar, District- West Tripura, PIN 799006

.....Petitioner

-VERSUS-

1. The High Court of Tripura,

represented by its Registrar General, Lichubagan, P.O. Secretariat,
Agartala, West Tripura, PIN-799010

2. The Registrar General,

High Court of Tripura, P.O. Secretariat, Agartala, West Tripura, PIN-
799010

.....Respondents

For Petitioner (s)	:	Mr. C.S. Sinha, Advocate
For Respondent (s)	:	Mr. B.N. Majumder, Sr. Advocate Mr. B. Paul, Advocate
Date of hearing & delivery of judgment & order	:	21.03.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

1. Heard Mr. C.S. Sinha, learned counsel appearing for the petitioner as well as Mr. BN Majumder, learned senior counsel assisted by Mr. B. Paul, learned counsel appearing for the respondents-High Court of Tripura.

2. By means of filing the instant writ petition, the petitioner has prayed for quashing the appointments of the persons who were appointed in the post of 'System Officer' under the respondents, and his exclusion from the merit list for appointment to the post of 'System Officer'.

3. Briefly stated, the petitioner belongs to reserved category. In response to an advertisement dated 29.05.2019, he submitted application for consideration of his appointment to the post of 'System Officer'. He appeared in the written examination held on 28.11.2020, and practical and viva-voce test held on 13.01.2021. It is the case of the petitioner that in the common merit list his name appeared, as only 2 posts were reserved for ST category under the advertisement dated 29.05.2019. He was confident that he would be considered for appointment, but later on he came to know that those 2 posts were filled up by candidates belonging to other categories. The petitioner made an application under the provision of RTI Act, 2005, before the appropriate authority seeking details of the selection and appointment to the post of 'System Officer' etc. (Annexure 4 to the writ petition).

4. In response to his RTI application dated 25.02.2021, the State Public Information Officer, communicated the petitioner vide letter dated 25.03.2021 alongwith copies of notification dated 17.02.2021 bearing final common merit list, select list and result of candidates in written, practical and viva-voce test. It was found that in these examinations the total score secured by the petitioner was 75.75, which in percentage stands at 37.38% (Annexure 5 to the writ petition).

5. That apart, from the communication dated 25.03.2021 and the information thereof, in respect of the criteria of cut-off mark relied in the appointment and selection of 'System Officer', the petitioner came to know

that he had been excluded from selection and appointment to the post of 'System Officer', against ST vacancy on the premises that he had scored less than cut off mark in the written, practical and viva-voce tests.

6. On the aforesaid background, Mr. CS Sinha, learned counsel for the petitioner would contend before this court that, in the advertisement dated 29.05.2019, there was no mention of cut off marks in written, practical and viva-voce tests, and the respondents-High Court had introduced it after completion of the selection process, which is impermissible in law, and as a matter of fact, the exclusion of the petitioner from the select list/merit list and filling up the said 2 posts' reserved for ST category candidates was illegal and arbitrary and the filling up of 1 of the 2 posts by candidates belonging to other category was bad in law, and such appointment issued to the candidate belonging to other category is liable to be quashed. Placing reliance upon the decision of the Hon'ble Supreme Court in *Bedanga Talukdar vs. Saifudaullah Khan and others* reported in *AIR 2012 SC 1803*, Mr. Sinha, learned counsel had contended that it is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the advertisement, and even if there is a power of relaxation in the Rules, the same would still have to be specifically indicated in the advertisement.

The crux of the submission of learned counsel for the petitioner is that if there is any determination or mention of cut off mark in the

advertisement, then, no cut off mark can be determined during the process of selection. In support of his submission, Mr. Sinha, learned counsel has cited a case of *K. Manjusree vs. State of A.P. and another*, decided on **15.02.2008** (**case no. Appeal (Civil) 1313 of 2008**), wherein the Hon'ble Supreme Court of India held that *"If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview"*.

7. To controvert the submission of Mr. Sinha, learned counsel for the petitioner, Mr. Nandi Majumder, learned standing counsel appearing for the High Court, has contended at the very outset that, the aforesaid two decisions as referred by the learned counsel for the petitioner are not applicable to the facts of the present case. Secondly, Mr. Nandi Majumder, learned standing counsel has submitted that no minimum marks either for written examination or for viva-voce/practical test was mentioned in the advertisement. After completion of selection process, a common merit list of the candidate was prepared. Many candidates became qualified to fill up the posts of 'System Officer'. The name of the petitioner was also found to be appeared in the

common merit list at serial No. 23. Since the posts are limited, the Selection Committee referred the matter to the Hon'ble Chief Justice of the High Court of Tripura for a decision of fixation of the cut off mark for the candidates of reserved category as well as un-reserved category in the written examination for the post of 'System Officer', so that the eligible candidates based upon the cut off mark may be called for their appearance in the practical examination as well as viva-voce test. On completion of the matter as a whole, the Hon'ble Chief Judge, had been pleased to place the following order:-

“As in the immediate previous selection process, we may continue cut off marks of 50% and 40% for UR and Reserved vacancies/candidates”. (Annexure R-1 to the affidavit-in-opposition).

It is further submitted that in the previous recruitment process to fill up the post of 'System Officer', it was decided by the High Court in October, 2017, that the candidates of UR category who scored minimum 50% and candidates of reserved category (ST & SC) who scored 40% marks in written examination may be called for the practical examination and viva-voce test. The petitioner was also called for participating in the practical test and viva-voce. After completion of the entire selection process, a common merit list was published on the basis of total marks a candidate obtained in the written examination, practical as well as viva-voce test. The name of the petitioner was found to have appeared at serial No. 23 of the said common merit list, and as he could not score overall 40% marks, he was considered not suitable for the post of 'System Officer'. It is pertinent to mention here that one candidate,

namely, Bubagra Jamatia scored 47.25% and he was considered suitable, and accordingly appointed in the post of 'System Officer' against ST category. Learned senior counsel appearing for the respondents has further contended that the petitioner has failed to establish any bias for his exclusion from the select list. The cut-off mark was applied uniformly as regards all the candidates participated in the selection process. There was no discrimination or arbitrariness.

8. I have given my thoughtful consideration to the submissions advanced by learned counsel appearing for the parties.

9. What I have understood, the entire submission of Mr. Sinha, learned counsel for the petitioner centers round that non-mentioning of cut-off mark in the advertisement made the entire selection process vitiated. On careful reading of the case of *K. Manjusree (supra)* and *Bedanga Talukdar (supra)*, it is noticed that the Hon'ble Supreme Court has decided both the cases, where in the advertisement there was specific mention of cut-off mark and that cut-off mark was subsequently relaxed after written examination, which according to Hon'ble Supreme Court, was illegal and arbitrary. However, in the instant case, the basic distinction is that no cut-off mark was mentioned in the advertisement. All the candidates who applied for the post of 'System Officer' were called for appearing in the written examination. Many candidates became successful. Thereafter, practical test and viva-voce tests were conducted. The petitioner alongwith other candidates participated in the

practical and viva-voce tests. Many candidates became successful and marks were allotted to them.

10. I have carefully perused the notes initiated. It is evident that since no minimum qualifying mark in written examination is prescribed under the Rules, the cut off mark was required to be determined/fixed on the basis of the marks obtained by each category of candidates in written examination before the date for practical examination and viva-voce tests. It was proposed that the candidates under the UR category who scored minimum 50% and candidates (SC/ST) who scored 40% out of total marks would be called for practical examination and viva-voce test.

11. I have said earlier, the petitioner scored less than the qualifying cut off mark. For that reason, he was not found suitable to be appointed to the post of 'System Officer'.

12. In the opinion of this court, when there is no cut off mark mentioned in the advertisement, it was within the domain of the Selection Committee to fix/determine the cut-off mark to find out the best suitable candidate. The post of 'System Officer' is highly technical. As such, Selection Committee as well as the appointing authority had kept it in mind that these posts are to be filled up by the best performers.

13. Article 229 of the Constitution of India, empowers the Chief Justice of the High Court to make rules or to apply his discretion in appropriate cases and his decision is final. It is not the case here that there was any bias in

excluding the petitioner from the final merit list. The cut off mark as decided by the Chief Justice of the High Court had been applied uniformly in case of all the candidates who participated in the selection process.

14. In the light of above discussion, I find no merit in the present writ petition, accordingly, the same stands dismissed. However, there shall be no order as to cost.

Pending application(s), if any, also stands disposed of.

JUDGE



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